



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/829,364	04/09/2001	Steven B. Smith	9311.16	9690

21999 7590 06/20/2005
KIRTON AND MCCONKIE
1800 EAGLE GATE TOWER
60 EAST SOUTH TEMPLE
P O BOX 45120
SALT LAKE CITY, UT 84145-0120

EXAMINER

RUDY, ANDREW J

ART UNIT PAPER NUMBER

3627

DATE MAILED: 06/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/829,364

Applicant(s)

SMITH ET AL.

Examiner

Andrew Joseph Rudy

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 and 66-76 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 66-76 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

1. Claims 1-11 and 66-76 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 and 66-76 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, line 5, "total funds" is not clear.

Claim 1, line 14, "said adjusted balance of said plurality of spending accounts" is not clear in juxtaposition to "adjusting the balance of the at least one of said plurality of spending accounts" from the preceding lines 10-11. In short, a balance from a plurality of accounts flows from a single account. Thus, it is not clear what balance Applicant is claiming.

Claim 66, line 8, "total funds" is not clear.

Claim 66, line 13, "said adjusted balance of said plurality of spending accounts" is not clear in juxtaposition to "adjusting the balance of the at least one of said plurality of spending accounts" from the preceding lines 11-12. In short, a balance from a plurality of accounts flows from a single account. Thus, it is not clear what balance Applicant is claiming.

Applicant's April 12, 2005 Amendment and associated REMARKS have been reviewed. These are convincing with regards to the previous 35 USC 112 rejections, sans the first noted one. The term "total funds" is not supported by the descriptive portion of the specification. Other meanings associated with this phrase may be given different to what was presented by Applicant. As is, the Examiner is not sure how to construe the meets and bounds of such.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-11 and 66-76, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolfberg et al., US 5,745,706.

Wolfberg discloses a wireless communication for providing a plurality of spending accounts, e.g. col. 4, invoices, payroll, spending limits, e.g. 131, 33, automatically adjusting a balance, e.g. col. 9, lines 55-62, and comparing balances, e.g. col. 7, lines 39-64. Wolfberg does not disclose the term total funds. However, it is noted that total funds are common knowledge in the business accounting art. To have provided total funds, and other common knowledge job based accounting techniques previously referenced, associated with the accounts of Wolfberg would have been obvious to one of ordinary skill in the art. The motivation for doing such would have been to incorporate common knowledge accounting terms/techniques with the accounts of Wolfberg. Applicant's April 12, 2005 Amendment and associated REMARKS have been reviewed and are convincing with regards to Walsh. However, Applicant's referral to cancelled claim 29 was not the persuasive argument. However, Applicant's traversal of the Official Notice is insufficient to overcome the previous assertions.

Applicant's attempt at traversing the Official Notice findings as stated in the previous Office Action mailed March 2, 2005 is inadequate. Adequate traversal is a two step process. First, Applicant must state their traversal on the record. Second, and in accordance with 37 C.F.R. § 1.111(b) which requires Applicant to specifically point out the supposed errors in the Office Action, Applicant must state why the Office Action statements are not to be considered common knowledge or well known in the art.

In this application, Applicant appears to have met step (1) as a form of traversal of Official Notice has been taken. Second, Applicant has failed step (2) since they have failed to argue why the Official Notice statements are not to be considered common

knowledge or well known in the art. Because Applicant's traversal is inadequate, the Official Notice, e.g. common knowledge, statements are taken to be admitted as prior art. See, MPEP § 2144.03

The Examiner regrets that Wolfberg was not previously applied given the prosecution history of the present Application. Nonetheless, it is warranted.

7. Further pertinent references of interest are noted on the attached PTO-892.
8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 571-272-6789. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander G. Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, reading "Andrew Joseph Rudy". The signature is written in a cursive, flowing style with a large initial "A".